



Judicial Council of California · Administrative Office of the Courts

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 29, 2010

Title	Agenda Item Type
Family Law: Appearance, Stipulations, and Waivers	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Revise form FL-130 and approve form FL-130(A)	January 1, 2011
Recommended by	Date of Report
Family and Juvenile Law Advisory Committee	July 28, 2010
Hon. Jerilyn L. Borack, Cochair	Contact
Hon. Susan D. Huguenor, Cochair	Gabrielle Selden, 415-865-8085 gabrielle.selden@jud.ca.gov

Executive Summary

The Family and Juvenile Law Advisory Committee recommends revising *Appearance, Stipulations, and Waivers* (form FL-130) and approving new form *Declaration and Conditional Waiver of Rights Under the Servicemembers Civil Relief Act of 2003* (form FL-130(A)). The proposed changes would more completely conform the forms to the waiver of rights requirements of the Servicemembers Civil Relief Act of 2003 (SCRA) relating to default judgments entered against servicemembers.

Recommendation

The Family and Juvenile Advisory Committee recommends that the Judicial Council, effective January 1, 2010, revise form FL-130 and approve form FL-130(A) to provide information to the courts and servicemembers about the Servicemembers Civil Relief Act of 2003 (SCRA) and provide a form that complies with SCRA waiver requirements that can be used by a servicemember-respondent to request that the court enter a stipulated judgment or marital settlement agreement while he or she is on active duty.

Copies of revised form FL-130 and new form FL-130(A) are attached at pages 5–6.

Previous Council Action

The Judicial Council previously revised form FL-130 effective January 1, 2006, updating the title of the federal act formerly known as the Soldiers’ and Sailors’ Civil Relief Act of 1940.

Rationale for Recommendation

The Servicemembers Civil Relief Act of 2003 (50 U.S.C. Appen. § 501 et seq.), formerly known as the Soldiers’ and Sailors’ Civil Relief Act of 1940, provides protections for military members when they enter active duty. It covers issues such as default judgments, rental agreements, security deposits, prepaid rent, credit card interest rates, mortgage foreclosures, insurance, and tax payments.

The U.S. Department of Justice has raised concerns regarding the Judicial Council’s compliance with SCRA, title 50 United States Code Appendix, sections 501 et seq. Specifically, whether the forms that include a waiver of rights under the SCRA meet the requirements of section 517. A review of all Judicial Council forms concluded that form FL-130 was the only one that contained a waiver under the SCRA and that this form should be revised to more accurately reflect all SCRA waiver requirements.

Form FL-130 is used in uncontested dissolution, legal separation, and nullity proceedings and actions to establish parentage. It is generally completed when the parties have a written settlement agreement or a stipulation for judgment that will be submitted to the court.

Under the SCRA, a default judgment cannot be entered against a respondent on active military duty and is subject to set-aside unless counsel is appointed to represent the respondent or the respondent waives his or her right to set-aside the default judgment under the SCRA. The waiver in the current version of form FL-130 at item 1c is intended to serve as the waiver of rights under the SCRA and reads as follows: “The respondent is a member of the military services of the United States of America and waives all rights under the Servicemembers Civil Relief Act (50 U.S.C. Appen. § 501 et seq.). No appearance fee is required.”¹

To be effective under the SCRA, the waiver of rights must (1) be in writing and displayed prominently in 12-point type; (2) be executed as an instrument separate from the obligation or liability to which it applies; (3) be made under a written agreement of the parties that is executed during or after the servicemember’s period of military service; (4) specify the legal instrument to which the waiver applies; and (5) specify the servicemember concerned if the servicemember is not a party to the instrument. (50 U.S.C. Appen. § 517(a)–(c).)

¹The second sentence in the waiver is intended to inform the servicemember and the court clerk that, under California law, servicemembers are not charged a fee to file this form. (Gov. Code, § 70673.)

To promote compliance with the above SCRA waiver requirements, form FL-130 would be revised to refer a servicemember to form FL-130(A), which would serve as the waiver of rights under the SCRA. Form FL-130(A) would contain the SCRA waiver language, provide information to the servicemember about the SCRA and how to obtain a copy of the act, and include a notice to the clerk of the court to indicate that courts must not charge the servicemember a fee to file form FL-130, as specified in Government Code section 70673.

Comments, Alternatives Considered, and Policy Implications

The invitation to comment was circulated from April 19, 2010, through June 18, 2010, to the standard mailing list for family and juvenile law proposals, as well as to the regular rules and forms mailing list. Included on the lists were judges, court administrators, attorneys, mediators, family dispute resolution directors, social workers, and other family law professionals, such as family court services directors, managers, supervisors, and staff. The invitation was also sent to the legal representative at the U.S. Department of Justice, Housing and Enforcement Section, Civil Rights Division who initiated contact with the council about the SCRA waiver on form FL-130.

Of a total of 8 commentators, 3 agreed with the original proposal and 3 agreed if modifications were made. One organization reviewed the proposal but did not provide a comment and a representative of the U.S. Department of Justice suggested changes to the waiver form. A chart showing the text of the comments and the committee's responses is attached at pages 7–9.

The most substantive comments regarding form FL-130(A) came from the U.S. Department of Justice, Housing and Enforcement Section, Civil Rights Division. The suggested changes included (1) specifying that the servicemember would be providing a conditional waiver of the right to seek to vacate a default judgment entered against him or her during or after a period of military service, (2) specifying the conditions of the waiver on the form, and (3) indicating that the servicemember would not waive his or her right to seek to vacate the judgment entered if the conditions were not met.

The committee agreed with the above suggestions and has incorporated them, with minor alterations, into the items 1, 2, and 3 of form FL-130(A). In addition, based on the comments, the title of the form was changed from *Declaration and Waiver of Rights and Protections Under the Servicemembers Civil Relief Act of 2003* to *Declaration and Conditional Waiver of Rights Under the Servicemembers Civil Relief Act of 2003*.

Another commentator suggested changes to assist the parties in understanding how to complete item 2 on form FL-131 (now item 2a on form FL-130(A)). The commentator suggested adding three check boxes below item 2, so parties could indicate whether the title of the document is a “stipulation for judgment,” “marital settlement agreement,” or some other title. The commentator also suggested renaming form FL-131 to clearly indicate that it is an attachment for form FL-130 and updating form FL-130 to reflect the changed title.

The committee agreed with the above suggestions and incorporated them into the revisions that it is recommending for adoption. Specifically, the form was revised to include a line below the title to indicate it is an attachment to form FL-130. The form was also renumbered as FL-130(A) to indicate that it is to be attached specifically to form FL-130.

Implementation Requirements, Costs, and Operational Impacts

The proposal's implementation requirements, costs, and operational impacts should be minimal. Standard reproduction costs will be incurred in distributing the revised forms. Litigants may also find these forms on the court's Web site and public libraries, thus reducing the need for courts to maintain a large number of copies onsite.

Relevant Strategic Plan Goals and Operational Plan Objectives

The proposed revised and new form support the policies underlying strategic Goal I, Access, Fairness, and Diversity, because they will meet the needs of self-represented servicemembers in California courts.

Attachments

1. Form FL-130, at page 5
2. Form FL-130(A), at page 6
3. Chart of comments, at pages 7–9
4. Attachment A: Servicemembers Civil Relief Act of 2003 (50 U.S.C. App. § 517)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	<p style="text-align: center;"><i>FOR COURT USE ONLY</i></p> <div style="border: 1px solid gray; padding: 10px; text-align: center; margin: 20px auto; width: 80%;"> <p>Draft 7 7/13/10 gds Not approved by the Judicial Council</p> </div> CASE NUMBER: _____
<p style="text-align: center;">SUPERIOR COURT OF CALIFORNIA, COUNTY OF</p> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER: RESPONDENT:	
<p>APPEARANCE, STIPULATIONS, AND WAIVERS</p>	

1. **Appearance by respondent** (you must choose one):

- a. By filing this form, I make a general appearance.
- b. I have previously made a general appearance.
- c. I am a member of the military services of the United States of America. I have completed and attached to this form *Declaration and Conditional Waiver of Rights Under the Servicemembers Civil Relief Act of 2003* (form FL-130(A)).

2. **Agreements, stipulations, and waivers** (choose all that apply):

- a. The parties agree that this cause may be decided as an uncontested matter.
- b. The parties waive their rights to notice of trial, a statement of decision, a motion for new trial, and the right to appeal.
- c. This matter may be decided by a commissioner sitting as a temporary judge.
- d. The parties have a written agreement that will be submitted to the court, or a stipulation for judgment will be submitted to the court and attached to *Judgment (Family Law)* (form FL-180).
- e. None of these agreements or waivers will apply unless the court approves the stipulation for judgment or incorporates the written settlement agreement into the judgment.
- f. This is a parentage case, and both parties have signed an *Advisement and Waiver of Rights Re: Establishment of Parental Relationship* (form FL-235) or its equivalent.

3. **Other** (specify):

Date: _____ (TYPE OR PRINT NAME)	▶	_____ (SIGNATURE OF PETITIONER)
Date: _____ (TYPE OR PRINT NAME)	▶	_____ (SIGNATURE OF RESPONDENT)
Date: _____ (TYPE OR PRINT NAME)	▶	_____ (SIGNATURE OF ATTORNEY FOR PETITIONER)
Date: _____ (TYPE OR PRINT NAME)	▶	_____ (SIGNATURE OF ATTORNEY FOR RESPONDENT)

SPR10-31**Family Law: Appearance, Stipulations, and Waivers** (revise form FL-130, and approve form FL-130(A))

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	Hon. Louise Fightmaster (not on behalf of an organization) Santa Rosa	A	Agree with proposed changes.	No response required.
2.	Harriett Buhai Center for Family Law by Erin Dabbs Staff Attorney Los Angeles	AM	Typographical correction: In the information box labeled “Notice to Servicemember,” note that there is a parenthesis at the end of the paragraph that does not have a mate.	The committee agreed to make this change.
3.	Orange County Bar Association by Lei Lei Wang Eckvall President Newport Beach	A	No specific comment provided.	No response required.
4.	Superior Court of Sacramento County by Robert Turner ASO II Finance Division Sacramento	NI	No comment provided.	No response required.
5.	Superior Court of San Diego County by Michael M. Roddy Court Executive Officer San Diego	A	Our court appreciates the changes proposed, which are clear and comply with the SCRA requirements; however, the revisions still leave open the issue of the first paper fee when the parties have an agreement regarding custody, visitation and support previously discussed at an FLC meeting.	The proposal only included necessary changes to conform Judicial Council forms to the waiver requirements of SCRA. Because the issue of the first filing fee would be an important substantive change to the proposal, the committee believes that public comment should be sought before such language on the forms is considered for adoption. The committee will consider this suggestion during a future rules cycle.
6.	Amber R. Standridge Trial Attorney United States Department of Justice Housing and Enforcement Section, Civil Rights Division Washington, D.C.	NI	Below please find the modifications we propose to the language you provided: By signing this conditional waiver and attaching it to Appearance, Stipulations, and Waivers (form FL-130), I declare that I am entitled to the benefits of the Servicemembers Civil Relief Act, 50 U.S.C. App. §§501-596 (“SCRA), and:	The committee agreed with these suggestions and has incorporated them, with minor alterations, into the revisions that it is recommending for adoption.

SPR10-31**Family Law: Appearance, Stipulations, and Waivers** (revise form FL-130, and approve form FL-130(A))

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	Commentator	Position	Comment	Committee Response
			<p>1. To permit the court to decide this cause as an uncontested matter and enter a judgment that incorporates the terms of the written agreement made between me and the petitioner, a copy of which is attached hereto, I hereby make a knowing, intelligent, and voluntary conditional waiver of the right provided by the SCRA, 50 App. U.S.C. § 521, to seek to vacate a default judgment entered against me in this matter. This waiver is conditioned upon the court's entry of a judgment that incorporates the terms and conditions of the written agreement between me and the petitioner attached hereto without deviation. Should the court enter an order that deviates in any manner from the written agreement between me and petitioner attached hereto, then I do not waive any of my rights under the SCRA, including my right to seek vacation of the judgment at any time.</p> <p>2. This conditional waiver applies only to a default judgment that incorporates the terms of the written agreement between me and petitioner attached hereto in the action styled: [insert style and case number of action in which conditional waiver is to be filed].</p> <p>3. This conditional waiver was executed during or after a period of military service.</p>	
7.	Superior Court of Los Angeles Los Angeles	A	Changes comply with the Civil Service Members Relief Act.	No response required.
8.	Superior Court of Orange County By Linda Daeley	AM	Proposed Form FL-131(now form FL-130(A)) is an attachment to FL-130 and should be titled	The committee agreed to make the suggested changes to forms FL-130 and FL-131.

SPR10-31

Family Law: Appearance, Stipulations, and Waivers (revise form FL-130, and approve form FL-130(A))

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
	<p>Manager, Family Law Division Santa Ana</p>		<p>as such since this document would not be filed on its own. The changes to the title of FL-131 (<i>now form FL-130(A)</i>) should be reflected on FL-130 under 1(c).</p> <p>In addition, on Form FL-131(<i>now form FL-130(A)</i>), #2, options should be given to assist the parties as follows:</p> <p>____ Stipulation for Judgment</p> <p>____ Marital Settlement Agreement</p> <p>____ other _____</p>	<p>Specifically, form FL-131 was renamed: “<i>Declaration and Waiver of Rights And Protections Under The Servicemembers Civil Relief Act of 2003 (Attachment to Appearance, Stipulations, and Waivers (form FL-130))</i>.” The number of the form was also changed to FL-130(A). In addition, form FL-130 was revised to refer to the changed title of form FL-130(A).</p> <p>The committee agreed to change form FL-130(A) to provide three check boxes under item 2. The check boxes will allow the servicemember to indicate the title of the agreement to which the waiver applies. The servicemember would indicate if the agreement is titled. a. “Stipulation for Judgment,” b. “Marital Settlement Agreement,” or c. “Other.”</p>

Attachment A

SERVICEMEMBERS CIVIL RELIEF ACT Public Law 108-189 50 U.S.C. App. §§501–596 (19 Dec 2003) as amended by Public Law 108-454 (10 Dec 2004)

§ 517. Waiver of rights pursuant to written agreement [Sec. 107]

(a) In general

A servicemember may waive any of the rights and protections provided by this Act [sections 501 to 596 of this Appendix]. Any such waiver that applies to an action listed in subsection (b) of this section is effective only if it is in writing and is executed as an instrument separate from the obligation or liability to which it applies. **[Preceding sentence added by P.L. 108-454, 10 Dec 2004.]** In the case of a waiver that permits an action described in subsection (b), the waiver is effective only if made pursuant to a written agreement of the parties that is executed during or after the servicemember's period of military service. The written agreement shall specify the legal instrument to which the waiver applies and, if the servicemember is not a party to that instrument, the servicemember concerned.

(b) Actions requiring waivers in writing

The requirement in subsection (a) for a written waiver applies to the following:

(1) The modification, termination, or cancellation of--

(A) a contract, lease, or bailment; or

(B) an obligation secured by a mortgage, trust, deed, lien, or other security in the nature of a mortgage.

(2) The repossession, retention, foreclosure, sale, forfeiture, or taking possession of property that--

(A) is security for any obligation; or

(B) was purchased or received under a contract, lease, or bailment.

(c) Prominent Display of Certain Contract Rights Waivers – Any waiver in writing of a right or protection provided by this Act that applies to a contract, lease, or similar legal instrument must be in at least 12 point type. **[Added by P.L. 108-454, 10 Dec 2004.]**

(d) Coverage of periods after orders received

For the purposes of this section—

(1) a person to whom section 106 [section 516 of this Appendix] applies shall be considered to be a servicemember; and

(2) the period with respect to such a person specified in subsection

(a) or (b), as the case may be, of section 106 [section 516 of this Appendix] shall be considered to be a period of military service.